



BOARD OF COUNTY COMMISSIONERS
YELLOWSTONE COUNTY, MONTANA
TUESDAY, MAY 29, 2012

SUBJECT: Zone Change #633 – East Lane
THROUGH: Candi Beaudry, AICP, Planning Director
FROM: Nicole Cromwell, AICP, Zoning Coordinator, Planner II

REQUEST

The applicant is requesting a zone change from Agricultural-Open (A-1) to Controlled Industrial (CI) on a 40-acre parcel of land described as the N1/2SW1/4NE1/4 and the N1/2SE1/4NE1/4 of Section 24, Township 1S, Range 25E. The property is located west of East Lane near the intersection of Trade Center Avenue. The Zoning Commission held a public hearing on May 14, 2012, and is forwarding a recommendation of approval on a 2-1 vote.

APPLICATION DATA

OWNER: Viking Land, LLC
AGENT: Sanderson Stewart
LEGAL DESCRIPTION: N1/2SW1/4NE1/4 and the N1/2SE1/4NE1/4 of Section 24,
Township 1S, Range 25E
ADDRESS: East Lane
SIZE OF PARCEL: 40 acres
EXISTING LAND USE: Agricultural land
PROPOSED LAND USE: Commercial/Industrial
EXISTING ZONING: A-1
PROPOSED ZONING: CI

APPLICABLE ZONING HISTORY

Subject Property - None

Surrounding Properties

Zone Change #17 – A zone change from A-1 to CI for all Tracts in C/S 1391 – portions now are Harnish Trade Center Subdivision and Shackelford-Yellowstone Subdivision - was approved in July 1974.

Zone Change #326 – 2215 Goodman Road - A zone change from A-1 to CI for Tracts 1A, 1B and 2 of C/S 1454 was approved on 9/2/1982.

Zone Change #364 – 6900 South Frontage Road - A zone change from A-1 to HC for Tract 1 of C/S 234 was approved on 10/5/1984.

Zone Change #461 – 6417 through 6780 Trade Center Avenue - A zone change from A-1 to CI on the S1/2SW1/4NE1/4 of Section 24, T1S, R25E, was withdrawn on 8/3/1995.

Zone Change #466 – 6765 through 6780 Trade Center Avenue - A zone change from A-1 to CI on the SW1/4SW1/4NE1/4 (now Lots 1 through 3, Bottrell Subdivision) was approved on 5/30/1996.

Zone Change #530 – 6417 through 6763 Trade Center Avenue – A zone change from A-1 to CI on Lots 4 & 5, Bottrell Subdivision was approved on 5/30/2000.

Zone Change #544 – 6780 South Frontage Road - A zone change from A-1 to CI on Tract 7A of C/S 234 was approved on 8/31/2001.

CONCURRENT APPLICATIONS

None

SURROUNDING LAND USE & ZONING

NORTH: Zoning: A-1
Land Use: Viking Land LLC – Sod farm
SOUTH: Zoning: CI
Land Use: Commercial and Industrial Businesses
EAST: Zoning: A-1
Land Use: Single-family residential with agricultural uses
WEST: Zoning: CI
Land Use: Tractor and Equipment Supply

REASONS

The subject property is located on the west side of East Lane just north of the intersection of East Lane and Trade Center Avenue. The property is bordered on the south by Bottrell Subdivision that is zoned CI and has several commercial and industrial uses. To the north is property owned by Viking Land, and is used for an active sod farm for Tvetene Turf. Elysian School is further north at the intersection of East Lane and Elysian Road. The applicant is requesting to rezone the 40-acre subject property from A-1 to CI to offer the land for sale and development for commercial or industrial uses. There are no public utilities such as water and wastewater to the property at this time. The property is outside the limits of annexation for the City of Billings for at least the next 5 years. Any new development would have to be served by on-site water and wastewater disposal.

Properties to the west and south are zoned CI and have been developed for commercial and industrial uses such as equipment supply, warehousing, and construction contractors. The owner has used this property for a sod farm in the past but it is no longer needed for this purpose. Access to the property is currently from East Lane, but it also has street frontage on Shackelford Lane to the west. The adjacent subdivision to the south (Bottrell Subdivision) has created concern with truck traffic on East Lane and its impact on Elysian School. East Lane is a designated collector street but is constructed at less than collector street standards. The property to the east is still active agriculture land.

A neighborhood meeting was conducted by the applicant on March 22, 2012, at Tvetene Turf offices at 6844 South Frontage Road. The minutes of meeting are included as Attachment B. The applicant shows in the meeting minutes that a possible minor subdivision is planned with an access road from Shackelford Lane along the north side of the subject property. The access road may only have an emergency access point on East Lane. Some owners were concerned with screening and buffering of any new uses. The Planning Division did not receive any telephone or written comments concerning the application.

The Transportation Plan and Functional Classification Map for this area of the county indicate East Lane is a collector street that moves traffic up to the South Frontage Road, a principal arterial street. There are no available traffic counts for East Lane. South Frontage Road at this location carries about 4,190 vehicle trips per day.

Planning staff reviewed this application and recommended approval for the proposed zone change based on the 12 criteria for zone changes. The property is adjacent to industrial zoning the south and west. Access to the property will be regulated through a subdivision improvement agreement. Adjacent uses to the north and east are primarily agricultural and should be compatible with any new development. The subdivision approval will need to meet all requirements for access, public health and public safety.

The Zoning Commission concurred with the staff recommendation based on the testimony received and the 12 criteria for zone changes.

RECOMMENDATION

The Zoning Commission voted 2-1 to recommend approval of Zone Change #633.

ZONING COMMISSION PUBLIC HEARING AND DISCUSSION

The Zoning Commission conducted a public hearing on this application on May 14, 2012. The applicant's agent, Dennis Randall, P.E. of Sanderson Stewart, was in attendance to testify in favor of the proposed zone change.

Vice Chairman Littler called for discussion after the staff presentation and recommendation. Joan Hurdle asked if all of the industrially zoned properties located in the areas along the freeway and the river are now zoned and developed, creating a need for more properties with this use. Nicole Cromwell stated she is unsure of the current market and there are different markets for different types of uses in Controlled Industrial zoning. She referred to an aerial map, and commented there may be some limitations to the types of uses due the lack of utilities. She pointed out these uses would be similar to the existing uses on surrounding properties.

Mr. Randall stated they are aware of the concerns with the access on East Lane. He explained that although it is not a zoning issue, they have met with Yellowstone County Engineer Mike Black, and BUFSA to discuss the East Lane approach and the emergency access. He said the intent is to have an easement across the north line of the property from Shackelford from the west to the east and they would place an emergency access gate on East Lane in accordance with the Fire Department's requirements. In response to a question from Mr. Littler, Dennis Randall pointed out on a posted map the proposed right-of-way easement and the location of the emergency gates on the east end of the property. Mr. Randall stated these would stay in place until such time East Lane is improved or Elysian School reconfigures or relocates their site.

George Nilson, 2050 East Lane, stated his farm has been in existence for more than 100 years. He pointed out the location of an access ditch which runs through the property on the posted site map. He voiced concern and stated he was not formally notified, but became aware of this request through a conversation with the neighbors. He stated he feels he should have been notified as they have water rights on the ditch which runs through this parcel.

Al Littler asked Mr. Nilson if the ditch is pulled annually. George Nilson responded and said the ditch is an open ditch which flows into a siphon and it was initially installed by Mr. Bottrell. He said they burn the ditch rather than pull it due to the depth, but the ditch that runs along Trade Center is pulled. Mr. Nilson reiterated they have had the ditch easement for 100 years. Mr. Nilson presented a letter of testimony to the Commission. The letter is Attachment D.

Leroy Walter, 1807 East Lane, states he owns property east of this parcel. He voiced concern this project will generate more traffic on East Lane and generate more dust. He suggested planting bushes on the East Lane property line for a visual barrier. He commented on CMG Construction's truck traffic which runs at times from 3:00 a.m.-5:00 p.m.

Henry Nilson, 1424 Nevada Way, stated he supports George Nilson's statement. He said farmers are unable to walk away from their farming business overnight due to the high cost of machinery and operations. He voiced concern and said a farmer is lost every time a place is taken out of agricultural production. He said he feels there is plenty of controlled industrial land that hasn't been built on, and it should be developed before this space is rezoned. He stated they should not be imposed on with these "get rich schemes". He voiced concern the Tvetene family is purchasing more parcels and commented they raised grass on another parcel for only a couple of years. He stated he is against the zone change.

Elsie Artzen, State Representative, 2323 Azalea, said she is concerned with the water rights and the potential for future development impacting Elysian School. She pointed out the importance of looking at the future aspect. She said she is concerned with the process as Mr. Nilson was not notified. She said she would be against the zone change.

George Nilson, 2050 East Lane, said they just voted to approve an expansion for Elysian School which will create more traffic with more kids. Al Littler observed that from a tax standpoint all of the areas contribute to the school district. He said the tax on agricultural land is less and Elysian School benefits from the zone changes. George Nilson commented on several failed business ventures.

Joan Hurdle stated it is important to consider all of the aspects or the whole proposal. Al Littler said the Commission has heard concerns about responding to traffic patterns, water rights and delivery systems, and the easements. He asked the applicant for rebuttal.

Dennis Randall explained the Yellowstone County Public Works Department is the gate keeper for the emergency access through the approach permit process. He stated the egress access is located to the west and they are trying to mitigate concerns with traffic on East lane. He said the approach will be permitted and administered by Yellowstone County Public Works Department. Al Littler reiterated and said once the permit is obtained a gate will be installed for emergency purposes, and a new road will be constructed on the west end of this property. Dennis Randall said they have drafted a lot line relocation and easement, and the intent would be to leave the farm road south of the pivot circle for Tvetene's use. He said the ditch has a prescriptive right to exist and when Shackelford is developed, an easement for delivery would have to accommodate water easements and would not denigrate water rights.

Nicole Cromwell clarified the notification process and pointed out the legal requirement to notify property owners within 300-feet by U.S. mail, and said Mr. Nilson is 600-feet away from the

subject property. She said staff posts the property and a notice is published as a legal advertisement in the Billings Outpost.

Elsie Artzen stated she is concerned due to the proposed use. It was noted that easements do not show in public records unless recorded.

George Nilson voiced concern with the undeveloped roadway on the west side of the property which runs along the ditch. He said he didn't know how Shackelford would be improved as it is a dirt road. Al Littler stated several of these concerns would be addressed at a public hearing for subdivision development and they are beyond the purview of the zone change. Staff noted a public hearing for subdivisions is only required for major plats of 6 or more lots.

George Nilson said he was not told this and commented on difficulties with CMG located in the Bottrell Subdivision who threatened to fill in the ditch on his land and voiced concern he would not be personally notified of the plat change. Al Littler said this would be part of the public hearing for the subdivision development.

Henry Nilson asked if schools are considered with the surrounding zone change and how many schools are in Light Industrial areas. He asked why it should be made impossible for the schools and children to deal with the traffic. He commented on the gravel pit located near Lockwood School and the nearby truck traffic. Mr. Nilson said industrial uses are not compatible with existing school areas.

Leroy Walter asked about the requirement for development of a county road and it was explained that Yellowstone County road standards require a paved to paved connection. Nicole Cromwell stated additional improvements would likely be needed if there is an additional 500 trips a day from the subject property.

Norma Walter, 1807 East Lane, voiced concern with persons going through the emergency access gate.

Dennis Randall explained the emergency gate's construction includes the installation of heavy plastic bollards. Ms. Walter said they have had vehicles through the existing Bottrell Subdivision road access at 2:30 a.m.

Mike Tvetene, 6844 S Frontage Road, stated it is very important to them that East Lane is not impacted.

Elsie Artzen, asked regarding the review process going forward. Al Littler stated anyone having ownership within 300- feet was notified; the legal advertisement was placed in the Billings Outpost; and the property posted. In response to a question by Joan Hurdle, Nicole Cromwell stated the Board of County Commissioners will hear this application at 9:45 a.m. on May 29, 2012. Al Littler stated the public hearing records are forwarded to the Board of County Commissioners along with the recommendation of this Commission.

Joan Hurdle said she feels that overall this zone change request is premature as there are too many unsettled issues. She said the reasoning given for this request is so the property can be sold. She noted the citizens' concerns with additional dust, traffic, and the effects on the school

expansion. She said this is primarily agricultural land, and there are plenty of Controlled Industrial properties not in use. She stated there is not a need for a zone change.

Ole Shafter said the water issue is important and should be addressed. He noted the surrounding industrial land uses.

Al Litter said property owners have the right to develop the property to the highest and best use. Joan Hurdle said this language is a realtor's terminology. Al Littler replied and said property owners have a state and constitutional right to develop as they see fit. Joan Hurdle commented on the need to consider the public good of Yellowstone County. Al Littler noted the twelve criteria within the growth plan; the surrounding controlled industrial and industrial properties, and stated agriculture is a commercial adventure. Joan Hurdle said this is a personal philosophy not applicable in this instance. Al Littler responded that this is a commercial endeavor.

Vice Chairman Littler closed the public hearing and called for a motion. Joan Hurdle made a motion to forward a recommendation of denial to the Board of County Commissioners of County Zone Change #633. The motion died for a lack of a second.

Ole Shafer made a motion and it was seconded by Al Littler to forward a recommendation of approval to the Board of County Commissioners of County Zone Change #633.

The motion carried with a 2-1 vote, Joan Hurdle dissenting.

RECOMMENDATION

The Zoning Commission recommends approval of Zone Change #633 on a 2-1 vote.

PROPOSED COUNTY COMMISSION DETERMINATIONS

The Board of County Commissioners, prior to any recommendation, shall consider the following:

1. *Is the new zoning designed in accordance with the Yellowstone County and City of Billings 2008 Growth Policy?*

The proposed zoning complies with the following goals of the Yellowstone County and City of Billings 2008 Growth Policy and area plans:

- Goal: Predictable land use decision that are consistent with neighborhood character and preferred land use patterns identified in neighborhood plans. (Land Use Element, page 6).

This zone change would allow for additional area for commercial and industrial development adjacent to existing uses that are similar to the surrounding development in the area.

- Goal: New developments that sensitive to and compatible with the character of adjacent development. (Land Use Element Goal, page 6).

This property is near existing commercial uses in the county.

2. *Is the new zoning designed to lessen congestion in the streets?*

The proposed zoning itself will not generate more traffic on East Lane or Shackelford Lane. However, allowed uses in the Controlled Industrial zoning district can have truck and heavy equipment traffic associated with them. If the zone change is approved, the applicant will be able to subdivide the property into smaller parcels. The parcels could be developed for commercial or industrial uses. The new zoning could allow additional commercial traffic on East Lane and/or Shackelford Lane. It is likely that through subdivision approval or approach permitting, the County may limit additional commercial traffic on East Lane to limit impacts to Elysian School and East Lane itself. The South Frontage Road, the nearest arterial street, will be able to handle any additional commercial traffic.

3. *Will the new zoning secure safety from fire, panic and other dangers?*

The subject property is currently served by the Billings Fire Department through the Billings Urban Fire Service Area. The nearest fire station is located on S 24th Street approximately 5 miles north of the subject property. Depending on the specific uses, the Fire Marshal may require on-site water supply for fire protection. Additional review for fire protection would be conducted during the subdivision or development process for this property.

4. *Will the new zoning promote health and general welfare?*

The new zoning will allow development of property that is adjacent to an existing commercial and industrial area. The proposed zoning should not have a negative effect on health or general welfare.

5. *Will the new zoning provide adequate light and air?*

The proposed zoning would require minimum setbacks, maximum building heights and maximum lot coverage. These requirements should allow adequate light and air to reach the subject property and adjacent properties.

6. *Will the new zoning prevent overcrowding of land?*

The proposed zoning does not allow residential uses by right. Residential uses may be allowed by special review approval. The required building setbacks and the lot coverage limitations should prevent overcrowding of land within the proposed zoning district.

7. *Will the new zoning avoid undue concentration of population?*

The proposed zoning is not anticipated to create an undue concentration of population. As stated above, residential uses are not allowed by right, and setbacks and uses possible without public utilities will be limited.

8. *Will the new zoning facilitate the adequate provisions of transportation, water, sewerage, schools, parks, fire, police, and other public requirements?*

Transportation: The new zoning could increase traffic on Shackelford Lane and East Lane, the two access roads available to the property. The increase would be addressed through traffic analysis during the subdivision and/or approach permitting review process.

Water and Sewerage: The property will be served by septic systems and wells or cisterns for each proposed lot when it is subdivided. RiverStone Health's

Environmental Health Services Division in coordination with the Montana Department of Environmental Quality will review the lots during the subdivision process to ensure the systems are suitable for the site and the proposed uses and meet all separation requirements.

Schools and Parks: If in the future this property is subdivided, the area schools will be notified and will have input as to the impacts on the schools. It would be anticipated there would not be a significant impact on the school system since residential uses are not allowed. The traffic access will need to be evaluated for impact on Elysian School on East Lane.

Fire and Police: The subject property is serviced by the Billings Fire Department and the Yellowstone County Sheriff's Department. Fire protection will be evaluated at the time of subdivision.

9. *Does the new zoning give reasonable consideration to the character of the district?*

The subject property is in an area that has existing commercial and industrial development to the south and west. To the north and east is active agricultural land. The new zoning gives reasonable consideration to the existing character of this area.

10. *Does the new zoning give consideration to peculiar suitability of the property for particular uses?*

The property is suitable for the proposed zoning.

11. *Was the new zoning adopted with a view to conserving the value of buildings?*

The proposed zoning will facilitate the subdivision of the subject property and will most likely increase the value of the subject property and may conserve the value of neighboring properties.

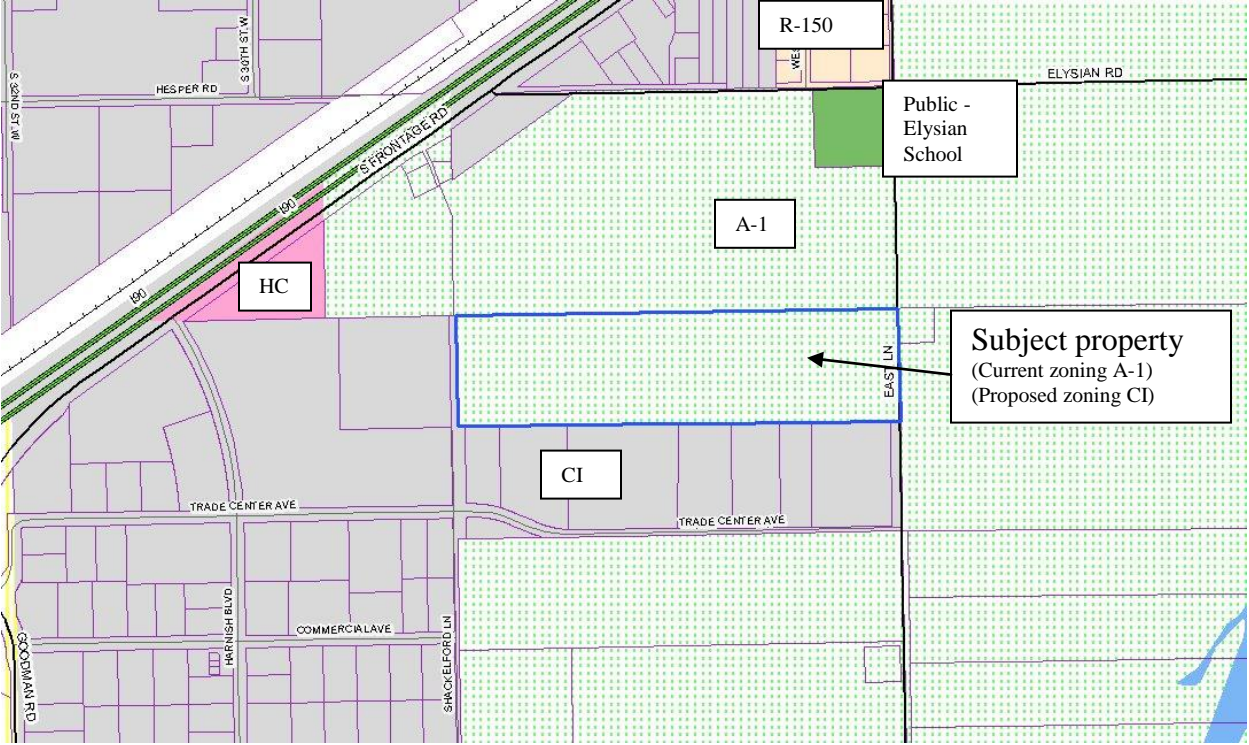
12. *Will the new zoning encourage the most appropriate use of land throughout such county or municipal area?*

The parcel is used for agricultural production but given is no longer needed for the sod farm. The new zoning is appropriate given the adjacent zoning and uses to the south and west.

ATTACHMENTS

Attachment A:	Zoning Map
Attachment B:	Applicant Letter & Pre-application neighborhood meeting minutes
Attachment C:	Site Photographs
Attachment D:	Letter from George Nilson

Attachment A - Zone Change #633
Zoning Map



Attachment B - Zone Change #633
Applicant Letter & Pre-application neighborhood meeting minutes

April 2, 2012
Project No. 11067.01

UNPLATTED PARCEL
N1/2 SW1/4 NE1/4 & N1/2 SE1/4 NE1/4 SECTION 24, T1S, R25E
ZONE CHANGE APPLICATION

INTRODUCTION

The attached Zone Change Application is being submitted on behalf of Viking Land LLC for a proposed zone change from Agricultural Open to Controlled Industrial (CI) for the above referenced unplatted parcel. An exhibit identifying the subject parcels is attached to this application for reference.

The following information is provided to satisfy the supplemental information requirements for the Zone Change Application.

In what way is the proposal consistent with the goals and policies of the adopted growth policy?

The proposed zone change request is consistent with some of the land use element goals and objectives as it is consistent with the zoning and uses of the adjacent properties to the south, west and north. The proposed zone change may also encourage economic development by allowing more flexibility in land use.

Explain the need for the intended zone change and why the property cannot be used under the existing zoning. Explain how the new zoning will fit in with the existing zoning and land uses of the immediate area.

The need for the zone change is to allow for uses consistent with other commercial properties in the area, including contiguous C.I. zoned properties to the south and east. The 40 acre property is not large enough to be a viable agricultural operation by itself, and market demands indicate a need for larger C.I. zoned parcels.

Project No.: 11067.01

Phone Number

406.655.4439

406-655-1616

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MEETING MINUTES

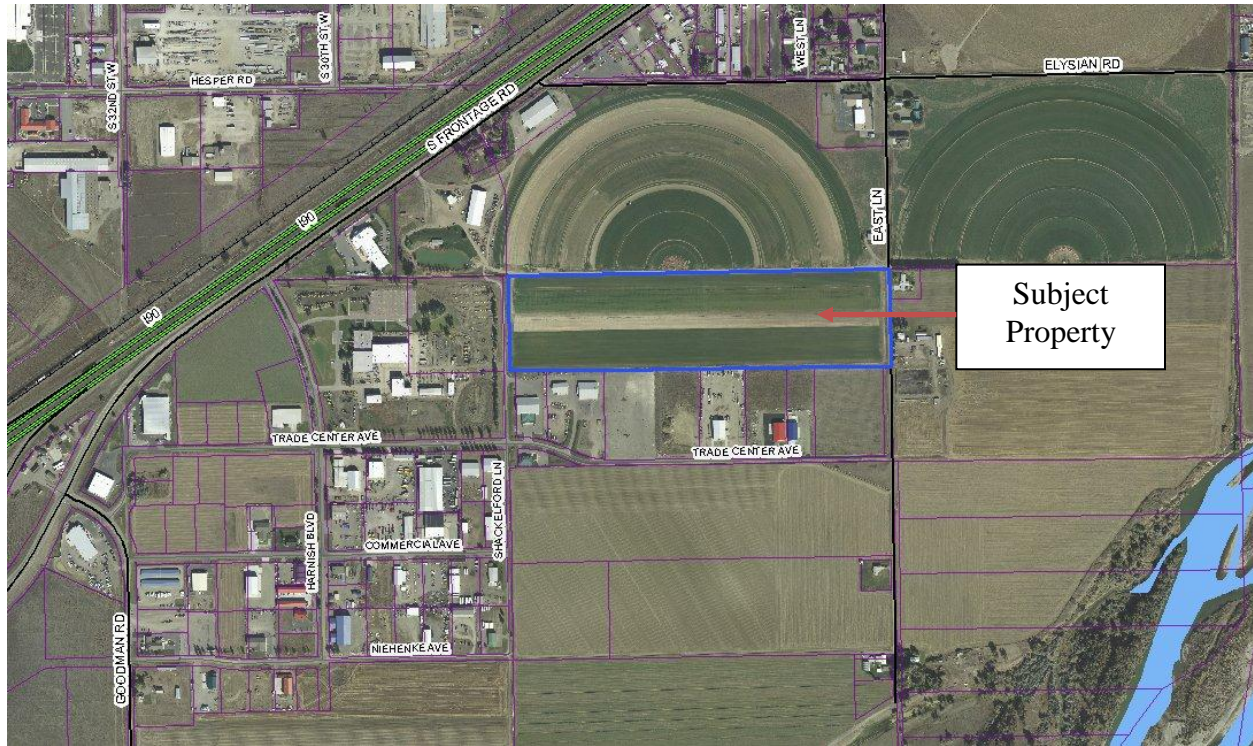
PROJECT: Proposed Zone Change – unplatted portion of Sec. 24, T1S, R25E			
Project No: 11067.01			
Meeting Location: 6844 South Frontage Road		Meeting Date: 3/22/12 6:00 P.M.	
Meeting Subject: Zone Change		Prepared by: Dennis Randall	
Attending:	(see attached sign-in sheet)		
Date of Issue: 3/23/12			

Minutes:

- Dennis Randall presented an overview of the County Zone Change process, anticipated Application, zoning board and county commissioner's action. Also reviewed the proposed zoning and a summary of allowable uses within the C.I. Zone.
- Discussed possible platting options for the property, creating 4 tracts for sale, with roadway on north line, extending to East lane, most likely with an emergency access only on east lane to prevent additional traffic on East Lane near the School.
- Opened the floor to questions.
 - Leroy Walter asked about intended uses, Mike Tvetene indicated that the property would be marketed and that the end user is not known at this time
 - Leroy Walter expressed desire to have a buffer along East Lane adjacent to his property. D. Randall relayed that Zone change approvals are not conditioned, but that the C.I. zoning being requested does have landscaping requirements.
 - Mrs. Walter expressed concern with additional traffic on East lane

- Gary Armstrong asked about the Zone change process and process and questions regarding the schedule. D. Randall indicated that if schedule is maintained, zoning commission would be May 14th and county commissioner on May 29th.
- Shane Swandal discussed the 30' easement along the north side of Bottrell subdivision, and that the owners desired to have a road at that location at some future date. Dennis Randall indicated that indicated that the subject property had no plans at this time to access east lane along the south boundary of the property.
- The meeting was closed at approximately 6:30 P.M.

Attachment C – Zone Change #633
Site Photographs



Subject Property – view west from East Lane

Attachment C – Zone Change #633, continued
Site Photographs



View south on East Lane



View north on East Lane

Attachment C – Zone Change #633, continued
Site Photographs



View south and west from East Lane



View north and west from East Lane

Attachment D– Zone Change #633
Letter from George Nilson

ZONE CHANGE #633 EAST LANE

- 1) We have a 100++++ YEAR OLD Irrigation Easement on West end of proposed property, for our farm, and were NOT notified by anyone of Zone Change. I found out through conversations and Outpost News Paper. Apparently no-one cares about farms any more and just looks at the land and are blind to ***THE WATER EASEMENTS*** that affect those down stream.
- 2) Elysian School Zone (corner of Elysian & East Lane) is bombarded with an abundance of traffic off Trade Center Avenue from CMG Construction, Hulteng Inc. Construction and Custom Concrete Inc. organizations, Large vehicles with Trailers etc. CMG Dirt trucks and other Super heavy equipment have done what was said by them, going out the West end and do not travel East Lane. Also, the “Reduced Speed” in the Elysian School Zone is ABUSED!!! Speeding as well as running the Stop Signs!!
- 3) CMG has a wash rack and are cleaning their heavy equipment and the results/contaminants go underground. I don’t know what effect it is having on the water table, but my home is water supplied through a well. Seems to me there should be an “Impact Study” performed before *any* ‘INDUSTRIAL’ Zones are approved (regardless of location). There is a lot of area that is already designated ‘Industrial’ and has become weed patches. One such is my neighbor just north of Trade Center Avenue. He has been good about maintaining it, however the weeds affect our crop production, as well as costs to fight the weeds. Because the weeds are not “Noxious”, the “COUNTY” will not enforce property maintenance!!!
- 4) Developer (according to conversation with neighbor) says the vehicle traffic will utilize existing roads on West End – I heard that the last time from Mr. Botrell’s Rep and Lawyer – Mr. Botrell said he would submit a Plat Change and NEVER lived up to his WORD!!! Now Trade Center Avenue is through to East Lane.
- 5) At that previous meeting, Mr. Kennedy said East Lane was a “Collector Road” and would not receive traffic from Trade Center Avenue. That was when Mr. Botrell said, “I will submit a Plat Change and Trade Center Avenue will NOT go through to East Lane.”
- 6) East Lane road condition, from Elysian Road to Trade Center Avenue, has been destroyed due to the ‘excess and *heavy* traffic’. There have been attempts to fill pockets and that lasts till the next truck and trailer goes by.
- 7) I was told that there are NO CONDITIONS subject to Zone Change Approval. It is approved or disapproved and the Developer is NOT held to his word, as was the case with the Plat Change that was never done by Mr. Botrell!!!!!!!!!!!!!! When I had my 1 acre for my house pulled out of my Agriculture, I was given 2 years to complete my home, yet there is so much undeveloped “Controlled Industrial Land” that sits blank for years and gathers weeds for their neighbors!!!! **WHY THE DOUBLE STANDARD????!!**
- 8) One of my neighbors has a daughter in 4H and has 2 sheep. When they walk the sheep, the traffic does not even slow on East Lane, from Trade Center Avenue. No caring or respect for a child’s endeavors!!!!
- 9) As a result of **DAILY EXPERIENCES**, I HIGHLY RECOMMEND the Zone Change be DISAPPROVED!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

*GEORGE D. NILSON
2050 EAST LANE
BELLINGHAM, MT 59101-6382*